Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

MARY STEWART, PETITIONER

v.

MARTIN SILVA, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should a mother who suffers the murder of her daughter by a person known to the police, the failure of the police to investigate the crime, the fabricated charge by the police nine years after the death that she herself is the murderer, and then the demeaning use of an abusive search warrant to punish and intimidate her have a remedy under 42 U.S.C. Section 1983, for the violation of her constitutional rights?

2. Is a police officer entitled to a qualified immunity from liability under 42. U.S.C. Section 1983, where his affidavit in support of a search warrant contains at least 31 deliberate fabrications or omissions of fact without which the magistrate would never have found probable cause to issue the warrant?

3. Is the decision below upholding the abusive use of a search warrant *not* to pursue a legitimate criminal investigation but rather to retaliate against the petitioner for her attempts to have the police investigate her daughter's murder in conflict with this Court's decisions recognizing that private citizens have a viable remedy under 42 U.S.C. Section 1983, for police lawlessness?

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OPINIONS BELOW

The unpublished *per curiam* opinion of the United States Court of Appeals for the Ninth Circuit in *Mary Stewart v. Martin Silva*(C.A. No. 04-55621), decided December 27, 2005, affirming the District Court's order granting the respondent Martin Silva's motion for summary judgment is set forth in the Appendix hereto(App. 1-3).

The unpublished Memorandum Opinion of the United States District Court for the Central District of California in *Mary Stewart v. Martin Silva*(Civil Action No. CV-02-177-SGL), decided March 17, 2004, granting the respondent Martin Silva's motion for summary judgment is set forth in the Appendix hereto(App. 4-18).

The unpublished order of the United States Court of Appeals for the Ninth Circuit in *Mary Stewart v. Martin Silva*(C.A. No. 04-55621), filed January 17, 2006, denying the petitioner Mary Stewart's timely filed petition for rehearing is set forth in the Appendix hereto(App. 19).

JURISDICTION

The decision of the Ninth Circuit Court of Appeals affirming the District Court's order granting the respondent Martin Silva's motion for summary judgment was entered on December 27, 2005; and its order denying the petitioner Mary Stewart's timely filed petition for rehearing was filed on January 17, 2006(App. 1;19). This petition for writ of certiorari is filed within ninety (90) days of the date of the court of appeals' denial of the petitioner Mary Stewart's timely filed petition for rehearing. 28 U.S.C. Section 2101(c). Revised Supreme

Court Rule 13.3. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1343(a)(4):

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> ...
>
> (3) To recover damages or to secure equitable or other relief under any Act of

Congress providing for the protection of civil rights, including the right to vote.

Civil Rights Act–42 U.S.C. Section 1983:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

STATEMENT

Some time during the evening of June 9, 1992, Terese Ranee Stewart, the 29-year-old daughter of the petitioner Mary Stewart ("the petitioner"), died in their home in Temecula, California as the result of a gunshot wound to her forehead. Investigators for the Riverside County Sheriff's Department found a .25 caliber semi-automatic handgun wedged butt down with the barrel facing away from Terese's body between the seat cushions of the chair where she was slumped, just under her armpit. A spent shell casing was found in the same location. The handgun had been given to the petitioner by a friend; she kept it in her bedroom and had never used it.

The Sheriff's deputies and homicide detectives photographed the room in the house where Terese was found as well as her own apartment separate from the house in the garage area, access to which required a key

which the petitioner provided. The coroner termed Terese's death a suicide, advising the petitioner that an autopsy of her daughter was unnecessary, advice which caused the petitioner to forego an autopsy of her daughter. The coroner's toxicology report found no drugs or alcohol in Terese's blood at the time of death.

In the days following Terese's death, the petitioner and her son Shane tried to come to terms with Terese's suicide. The petitioner, an experienced psychotherapist, could find nothing in her daughter's recent past to warrant the conclusion that she would take her own life. In fact, all indications were that she would not do so. Terese had just finished developing a lucrative software program for mental health professionals; she was in good spirits, socializing with friends days before her death, and she looked forward to completing her college education. The petitioner and Shane doubted Terese had taken her own life; and they reported their suspicions to the homicide investigators for the Riverside County Sheriff's Department.

Although the detectives and their supervisor insisted that there were no grounds to re-open the case, they did agree to test the gun for fingerprints. However, there were no prints or even smudges found on the weapon—it had been wiped clean. Instead of beginning an investigation to discover how Terese could take her own life with a weapon which had no fingerprints, the Sheriff's Department told the petitioner that she and her son were "in denial" about the event and after consulting with the two detectives at the death scene as well as a third detective assigned at the petitioner's urging to review the case, Sheriff Coyce Byrd inexplicably told the petitioner that because it really didn't look like a suicide, "it *must* be a suicide."

Faced with this refusal by the Sheriff's

Department to conduct any meaningful investigation of her daughter's death, the petitioner hired private investigators to examine all the relevant witnesses and evidence in an attempt to determine whether Terese had taken her own life or was murdered. Between 1992 and 2000, the private investigators assembled a compelling collection of interviews and evidence to conclude that Terese was murdered by John Wesley("Wesley"), a business associate of Terese and the petitioner in 1992.

Early in this private investigation, the petitioner examined forensic photos of her home and Terese's separate apartment taken when the police arrived on the morning June 10, 1992. The petitioner knew that when she came home near midnight on the evening of June 9, 1992, the house was locked and dark. There is a double deadbolt lock and a regular door lock on both the front and back doors to the house; the double deadbolt lock has no button lock *but requires a key to lock it.* Unbeknownst to the petitioner, Terese already lay dead in the spare bedroom within the house but the petitioner did not find her until the next morning. The forensic photos show that Terese's set of keys were inside of her locked apartment separate from the house when the police arrived on the morning of June 10, 1992.

Thus Terese was killed inside the petitioner's locked house while her keys which she would have had to use to lock the house were located in her separate, *locked* apartment access to which required a key which the petitioner provided to the police on the morning of June 10th. This fact proved that Terese could not have committed suicide: Terese had no way to get into the locked house and then lock it back up while the set of keys needed to do this were locked in her separate apartment; there must have been another person present with the key necessary to let Terese into the house and then lock

the house back up so that when petitioner came home at midnight on June 9, 1992, she found the house locked. John Wesley, then a business associate of Terese and the petitioner, possessed this key to the petitioner's house.

On June 10, 1992, in the midst of the Sheriff's Office's on-scene investigation of Terese's death, the petitioner did not go to Terese's apartment and did not see her keys there. After the Sheriff's investigators and the coroner had left her home, the petitioner left to find her son Shane, leaving Wesley and his wife Lynn in her house. When the petitioner returned, Terese's set of keys were on a TV stand in her house's family room, a place where the petitioner had never seen them before and in a place different from where the police's forensic photos showed them to be earlier that same day, i.e., in Terese's apartment. But until she saw the forensic photos in August of 1993, the petitioner assumed that Terese had left her keys on the TV stand. Wesley denied to the petitioner's private investigator that he moved the keys but claimed that he "found" Terese's keys on the TV stand after the petitioner left the house to find her son Shane.

Other physical evidence attending Terese's death pointed to homicide: the location of the handgun under her arm wedged butt down between the cushions of the armless chair where she was slumped is inconsistent with suicide where the gun more likely would have dropped to the floor; testing proved that the location of the spent shell casing should have been opposite to where it was found; and Terese's apparently self-inflicted wound in the *middle of her forehead* is an unheard wound with suicide. Moreover, the pattern of blood spattering on the wall is inconsistent with Terese's shooting herself with her own hand while sitting in a chair; she was most likely shot at some distance by another while standing, facing the door of the spare bedroom, then placed in the chair after the

shooting. Finally, there were no fingerprints on the handgun; *it had been wiped clean*, a circumstance clearly at odds with a self-inflicted wound.

Having concluded that Terese's death was most likely a homicide, the petitioner's nine-year private investigation then determined from all the available evidence that Wesley, with his wife Lynn as an accomplice, most likely killed Terese on the evening of June 9, 1992. The Wesleys met the petitioner in 1990 and John Wesley gradually insinuated himself into her life as her personal financial advisor and then as her business consultant. Besides persuading the petitioner to invest her money in some of their ventures, the Wesleys convinced the petitioner to contribute $85,000 in order to underwrite a computer business (Giant Computer Business Centers, Inc.); inventory was stored in the petitioner's house; and the Wesleys received keys to the petitioner's residence with permission to come and go as they pleased. Wesley also convinced the petitioner to set up a living trust of her real and personal property naming them as the trustees instead of Terese and Shane, falsely telling the petitioner that neither of her two children could be trustees since they were also the beneficiaries.

Both Terese and Shane became suspicious about dividing up their mother's property in the event of her death for purposes of this living trust and they delayed making any designations in this regard for fear that it would ultimately benefit the Wesleys as trustees. However, with Terese now dead, the petitioner's property no longer needed to be designated between the two children; and the Wesleys sought to complete the living trust and have full control over all of the petitioner's assets when she died. In fact, the petitioner's private investigation showed that prior to Terese's death, the Wesleys had concocted a scheme to steal everything